

(2) Provide services as an entity that is separate from its foreign carrier affiliate, in compliance with the following requirements:

(i) The authorized carrier shall maintain separate books of account from its affiliated foreign carrier. These separate books of account do not need to comply with Part 32 of this chapter; and

(ii) The authorized carrier shall not jointly own transmission or switching facilities with its affiliated foreign carrier. Nothing in this section prohibits the U.S. carrier from sharing personnel or other resources or assets with its foreign affiliate;

(3) File quarterly reports on traffic and revenue, consistent with the reporting requirements authorized pursuant to §43.61, within 90 days from the end of each calendar quarter;

(4) File quarterly reports summarizing the provisioning and maintenance of all basic network facilities and services procured from its foreign carrier affiliate or from an allied foreign carrier, including, but not limited to, those it procures on behalf of customers of any joint venture for the provision of U.S. basic or enhanced services in which the authorized carrier and the foreign carrier participate, within 90 days from the end of each calendar quarter. These reports should contain the following: the types of circuits and services provided; the average time intervals between order and delivery; the number of outages and intervals between fault report and service restoration; and for circuits used to provide international switched service, the percentage of “peak hour” calls that failed to complete;

(5) In the case of an authorized facilities-based carrier, file quarterly circuit status reports within 90 days from the end of each calendar quarter in the format set out by the §43.82 annual circuit status manual, with two exceptions: activated or idle circuits must be reported on a facility-by-facility basis; and the derived circuits need not be specified in the three quarterly reports due on June 30, September 30, and December 31. For purposes of this paragraph, “facilities-based carrier” is defined in §63.18 note 2 to paragraph (h).

(d) A carrier classified as dominant under this section shall file an original and two copies of each report required by paragraphs (c)(3), (c)(4), and (c)(5) of this section with the Chief, International Bureau. The carrier shall include with its filings separate computer diskettes for the reports required by paragraphs (c)(3) and (c)(5), in the format specified by the §43.61 and §43.82 filing manuals, respectively. The carrier shall also file one paper copy of these reports, accompanied by the appropriate computer diskettes, with the Commission's copy contractor. The transmittal letter accompanying each report shall clearly identify the report as responsive to the appropriate paragraph of §63.10(c).

[62 FR 64752, Dec. 9, 1997]

§63.11 Notification by and prior approval for U.S. international carriers that have or propose to acquire an affiliation with a foreign carrier.

(a) Any carrier authorized to provide international communications service under this part shall notify the Commission sixty days prior to the consummation of either of the following acquisitions of direct or indirect controlling interests in or by foreign carriers:

(1) Acquisition of a direct or indirect controlling interest in a foreign carrier (as defined in §63.18(h)(1)(ii)) by the authorized carrier, or by any entity that directly or indirectly controls the authorized carrier, or that directly or indirectly owns more than 25 percent of the capital stock of the authorized carrier; or

(2) Acquisition of a direct or indirect interest in the capital stock of the authorized carrier by a foreign carrier or by an entity that directly or indirectly controls a foreign carrier where the interest would create an affiliation within the meaning of §63.18(h)(1)(i)(B).

(b) Any carrier authorized to provide international communications service under this part that becomes affiliated with a foreign carrier within the meaning of §63.18(h)(1) that has not previously notified the Commission pursuant to this section or §63.18 shall notify the Commission within thirty days

after acquiring the affiliation. In particular, acquisition by an authorized carrier (or by any entity that directly or indirectly controls, is controlled by, or is under direct or indirect common control with the authorized carrier) of a direct or indirect interest in a foreign carrier that is greater than 25 percent but not controlling is subject to this paragraph but not to paragraph (a).

(c) The notification required under paragraphs (a) and (b) of this section shall contain a list of the affiliated foreign carriers named in paragraphs (a) and (b) of this section and shall state individually the country or countries in which the foreign carriers are authorized to provide telecommunications services to the public. It shall additionally specify which, if any, of these countries is a Member of the World Trade Organization; which, if any, of these countries the U.S. carrier is authorized to serve under this part; what services it is authorized to provide to each such country; and the FCC File No. under which each such authorization was granted. The notification shall certify to the information specified in this paragraph.

(1) The carrier also should specify, where applicable, those countries named in paragraph (c) of this section for which it provides a specified international communications service solely through the resale of the international switched services of U.S. facilities-based carriers with which the resale carrier does not have an affiliation. Such an affiliation is defined in § 63.18(h)(1)(i), except that the phrase “U.S. facilities-based international carrier” shall be substituted for the phrase “foreign carrier.”

(2) The carrier shall also submit with its notification:

(i) The ownership information as required to be submitted pursuant to § 63.18(h)(2); and

(ii) A “special concessions” certification as required to be submitted pursuant to § 63.18(i).

(d) In order to retain non-dominant status on the affiliated route, the carrier notifying the Commission of a foreign carrier affiliation under paragraph (a) or (b) of this section should provide information to demonstrate that it

qualifies for non-dominant classification pursuant to § 63.10.

(e) After the Commission issues a public notice of the submissions made under this section, interested parties may file comments within 14 days of the public notice.

(1) In the case of a notification filed under paragraph (a) of this section, the Commission, if it deems it necessary, will by written order at any time before or after the submission of public comments impose dominant carrier regulation on the carrier for the affiliated routes based on the provisions of § 63.10.

(2) The Commission will, unless it notifies the carrier in writing within 30 days of issuance of the public notice that the investment raises a substantial and material question of fact as to whether the investment serves the public interest, convenience and necessity, presume the investment to be in the public interest. If notified that the investment raises a substantial and material question, then the carrier shall not consummate the planned investment until it has filed an application under § 63.18 and submitted the information specified under § 63.18(h)(5) or (6) as applicable, and § 63.18(h)(7) and (8), as applicable, and the Commission has approved the application by formal written order.

(f) All authorized carriers are responsible for the continuing accuracy of certifications with regard to affiliations with foreign carriers made under this section and under § 63.18. Whenever the substance of any such certification is no longer accurate, the carrier shall as promptly as possible, and in any event within thirty days, file with the Secretary in duplicate a corrected certification referencing the FCC File No. under which the original certification was provided, *except that* the carrier shall immediately inform the Commission if at any time the representations in the “special concessions” certification provided under paragraph (c)(2)(ii) of this section or § 63.18(i) are no longer true. *See* § 63.18(i). This information may be used by the Commission to determine whether a change in regulatory status may be warranted under § 63.10.

§ 63.12

Note to § 63.11: "Control" as used in this section includes actual working control in whatever manner exercised and is not limited to majority stock ownership.

[62 FR 64753, Dec. 9, 1997]

§ 63.12 Processing of international Section 214 applications.

(a) Except as provided by paragraph (c) of this section, a complete application seeking authorization under § 63.18 shall be granted by the Commission 35 days after the date of public notice listing the application as accepted for filing.

(b) Issuance of public notice of the grant shall be deemed the issuance of Section 214 certification to the applicant, which may commence operation on the 36th day after the date of public notice listing the application as accepted for filing, but only in accordance with the operations proposed in its application and the rules, regulations, and policies of the Commission.

(c) The streamlined processing procedures provided by paragraphs (a) and (b) of this section shall not apply where:

(1) The applicant has an affiliation within the meaning of § 63.18(h)(1)(i) with a foreign carrier in a destination market, and the Commission has not yet made a determination as to whether that foreign carrier lacks sufficient market power in that destination market to affect competition adversely in the U.S. market, unless the applicant clearly demonstrates in its application at least one of the following:

(i) The applicant qualifies for a presumption of non-dominance under § 63.10(a)(3);

(ii) The affiliated destination market is a WTO Member country and the applicant qualifies for a presumption of non-dominance under § 63.10(a)(4); or

(iii) The affiliated destination market is a WTO Member country and the applicant agrees to be classified as a dominant carrier to the affiliated destination country under § 63.10, without prejudice to its right to petition for reclassification at a later date; or

(2) The applicant has an affiliation within the meaning of § 63.18(h)(1)(i) with a dominant U.S. carrier whose international switched or private line services the applicant seeks authority

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to resell (either directly or indirectly through the resale of another reseller's services), unless the applicant agrees to be classified as a dominant carrier to the affiliated destination country under § 63.10 (without prejudice to its right to petition for reclassification at a later date); or

(3) The applicant seeks authority to provide switched basic services over private lines to a country for which the Commission has not previously authorized the provision of switched services over private lines; or

(4) The application is formally opposed by a pleading meeting the following criteria:

(i) The caption and text of the pleading make it unmistakably clear that the pleading is intended to be a formal opposition;

(ii) The pleading is served upon the other parties to the proceeding; and

(iii) The pleading is filed within the time period prescribed for the filing of objections or comments; or

(5) The Commission has informed the applicant in writing, within 28 days after the date of public notice accepting the application for filing, that the application is not eligible for streamlined processing under this section.

(d) Any complete application that is subject to paragraph (c) of this section will be acted upon only by formal written order, and operation for which such authorization is sought may not commence except in accordance with such order. The Commission will issue public notice that the application is ineligible for streamlined processing. Within 90 days of the public notice, the Commission will issue an order acting upon the application or provide public notice that, because the application raises questions of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended.

[62 FR 64753, Dec. 9, 1997]

§ 63.13 Procedures for modifying regulatory classification of U.S. international carriers from dominant to non-dominant.

Any party that desires to modify its regulatory status from dominant to non-dominant for the provision of particular international communications